IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14389 of 2004
with
SPECIAL CIVIL APPLICATION No 14870 of 2004
with
SPECIAL CIVIL APPLICATION No 15234 of 2004
to
SPECIAL CIVIL APPLICATION No 15260 of 2004
with
SPECIAL CIVIL APPLICATION No 2403 of 2005
with
SPECIAL CIVIL APPLICATION No 2416 of 2005
with
SPECIAL CIVIL APPLICATION No 5798 of 2005
to
SPECIAL CIVIL APPLICATION No 5845 of 2005
with
SPECIAL CIVIL APPLICATION No 4929 of 2005
with
SPECIAL CIVIL APPLICATION No 5037 of 2005
to
SPECIAL CIVIL APPLICATION No 5039 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

FEDERATION OF PACKAGED DRINKING WATER MANUFACTURERS
Versus
UNION OF INDIA

Appearance:

1. Special Civil Application No. 14389 of 2004

MR YOGESH S LAKHANI for Petitioner No. 1

..... for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 1/1-1/2

NANAVATI & NANAVATI for Respondent in SCA NO.14389 and 14870 of 2004

MR JS YADAV for Respondents in rest of matters and Appearance in Cognate matters of the group respectively

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CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 15/04/2005

COMMON ORAL JUDGEMENT

Rule. Shri Saurin Mehta, the learned Advocate for M/s Nanavati & Nanavati waives service of Rule on behalf of the respondent in Special Civil Application Nos.14389 and 14870 of 2004. Shri J.S.Yadav, the learned advocate waives service for Rule for respondents in remaining matters of this group.

With the consent of the learned advocates for the parties, all these matters are heard together and as the common questions of law and facts arise in all these special civil applications, they are being disposed of by this common judgment.

.RS 2.

#. In this group of petitions, the respective petitioners have prayed for an appropriate writ, order or direction declaring that the action of the respondents in preventing of use of BIS marking, more particularly, IS : 14543 : 2004 in respect of flexible pouches (sachets) of water manufactured by them as null and void, illegal, arbitrary and unconstitutional. The respective petitioners have also challenged the decision of the respondents in not renewing the licence for packaged drinking water in pouches. Though in the petition, the petitioners have challenged action whereby standards and specification for the packaged drinking water in IS: 14543 : 2004 has been restricted inasmuch as the container of packaged water in excess of 5 litres to be colourless and transparent and that it also requires that plastic container should be in conformity with IS : 15410 : 2003 (Indian Standard Containers for Packaging of Natural Mineral Water and Packaged Drinking Water Specification), which in turn required plastic container

to be colourless with 85 % transparency but the same is not pressed and it is submitted that petitions are restricted to the prayer with regard to flexible pouches only.

#. Shri N.D.Nanavati, the learned Senior Advocate, Shri Y.S.Lakhani, Shri B.M.Mangukia, Shri D.D.Vyas, Shri M.J.Parikh, the learned advocates appear on behalf of the respective petitioners. It is the case of the petitioners that they were holding the valid licence to manufacture the packaged drinking water as prescribed under the Bureau of Indian Standards Act, 1986 (hereinafter referred to as the "Act" for short) and Bureau of Indian Standards (Certification) Regulations, 1988 (hereinafter referred to as the "Regulations" for brevity). As per Notification dated 29th September, 2000 issued by the Ministry of Health and Family Welfare, amended by Prevention of Food Adulteration Rules in exercise of the powers under Section 23 of the Prevention of Food Adulteration Act, 1954 and thereby sub-rule 28 in Rule 49 has been added and the said Rule provides for the packaged drinking water and it prohibits the persons from manufacture, sell or exhibit fro sale packaged drinking water except under the Bureau of Indian Standards Certification Mark. It is the case of the petitioners that BIS Certification is issued by the respondent No.2 which is empowered under the provisions of the Act to lay down several standards of security of the product and packing of the product and the Bureau of Indian Standards came out with revised standard for packaged drinking water in June, 2004 and accordingly, has come out with IAS : 14543 : 2004 which provides the standard of packing and packed drinking water. It is the case of the petitioners that a person who intends to use the aforesaid specification prescribed by Bureau of Indian Standard are required to obtain licence which is required to be considered by BIS under Section 15 of the Act and all the petitioners had obtained licence. It is the case of the petitioners that though the petitioners are meeting with all the specifications prescribed in the licence and meeting with specifications as per IAS : 14543 : 2004 which is standard specified by Bureau of Indian Standard, the respondents have taken a policy decision not to renew the licence hereinafter for packaged drinking water in the pouches and the decision has been taken that wherever licence is for drinking water, the licence will not be renewed. It is the case of the petitioners that the petitioners are restrained from use of BIS Mark on the pouches and / or sachets. It is submitted that the aforesaid decision has been taken on the basis of the instructions under the guise of

executive instructions issued by the Bureau of Indian Standards without there being any standard specified for pouches for packaged drinking water and therefore, it is submitted that the action of the respondents is clearly in breach of provisions of the Act, Rules and Regulations. It is further submitted that so long as the petitioners are holding valid licence issued by the Bureau under the Act, as well as Regulations and the specifications prescribed in the licence are met with by the petitioners and unless and until there is new standard prescribed / specified for pouches of packaged drinking water by the BIS, it is not open to the respondents to impose such restrictions prohibiting use of BIS mark on pouches and sachets. It is also submitted that the only restriction under the provisions of Prevention of Food Adulteration Rules is that "no person shall manufacture, sell or exhibit for sale packaged drinking water except under he Bureau of Indian Standards Certification Mark" and as on today, there is standard specified by BIS for sale of packaged drinking water is IS : 14543 : 2004 and all the petitioners are meeting with the specifications and norms fixed under IS : 14543 : 2004 and they are bound to comply with and meet with the specifications of IS : 14543 : 2004. It is submitted that most of the petitioners are having valid licence which is in existence which is inclusive of drinking water in pouches also. It is submitted that unless and until there is specification / norms and / or standard declared / specified by BIS of pouches for packaged drinking water, the respondents cannot restrain the petitioners from using BIS Mark on pouches / sachets. It is also further submitted that under the guise that a new standard is under contemplation for pouches for packaged drinking water unless and until there is standard declared for pouches for packaged drinking water which is required under the provisions of the Act, it is not open for the respondents to restrain the petitioners from using BIS. All the petitioners are meeting with specifications and standards vide IS : 14543 : 2004. It is further submitted that if ultimately, in any appropriate case, it is found that any of the petitioners are not meeting with norms and standards and specifications as per IS : 14543 : 2004, their licence can be suspended and / or cancelled. However, so long as they meet with the standards / specifications for packaged drinking water in IS : 14543 : 2004 and unless and until there is new standard declared / specified for pouches for drinking water, the action of the respondents in restraining the petitioners from using BIS and / or the decision of the respondents not to renew the licence of licensees for pouches for packaged drinking water is

absolutely illegal and contrary to the provisions of the Rules and Regulations and therefore, it is requested to allow special civil applications and to issue appropriate writ directing the respondents and to allow the petitioners to use the BIS marking in respect of flexible pouches / sachets and to renew the licence at least until a new standard is prescribed / specified by the respondent No.3 Bureau of Indian Standard for pouches for packaged drinking water.

#. In response to the notice issued by this Court, M/s Nanavati and Nanavati Associates appears for respondent No.2 so far Special Civil Application No.14389 of 2004 and special civil application No.14870 of 2004 are concerned and Shri J.S.Yadav, the learned advocate appears for respondents - Bureau of Indian Standards in all other matters. Affidavit-in-reply is filed on behalf of respondent No.2 - Bureau of Indian Standards in Special Civil Application No.14389 of 2004 by Nanavati and Nanavati Associates. It is submitted in the affidavit-in-reply that Section-3 of the Act deals with the powers and functions of the Act. Section 15 deals with grant, renewal, suspension, cancellation of licence. Section 15(1) of the Act provides that Bureau may, by order, grant, renew, suspend or cancel the license in such manner as may be determined by regulations. Sub-section (2) of Section 15 provides that grant or renewal of a licence under sub-section (1) shall be subject to such conditions and on payment of such fees, as may be determined by Regulations. Section 16 of the Act provides that any person aggrieved by the order made under Section 15 of the Act, may prefer an appeal to the Central Government within such a period as may be prescribed any other procedure relating to the appeal. Section 37 of the Act empowers the Central Government to make Rules for carrying out the purposes of this Act and Section 38 of the Act empowers the Executive Committee of the Bureau with the previous approval of the Central Government, to make regulations consistent with the provisions of the Act and rules to carry out the purpose of the Act. It is further submitted that under Section 37 of the Act, the Central Government has made Rules called "Bureau of Indian Standards, 1987". Rule-7 of the said Rules provide for establishment, publication and promotion of Indian Standards and sub-rule (6) of Rule-7 prescribes procedure for establishment of the Indian Standards. It is also further submitted that Bureau of Indian Standards in exercise of the powers conferred by Section 38 of the Act, has made Regulations named "Bureau of Indian Standard (Certification) Regulations, 1988" and said regulations interalia provides for manners and

conditions for grant and renewal of Licence for quality system as well as matters other than quality system. It is further submitted that the Executive Committee in its meeting held on 8.9.2004 took a policy decision regarding use of flexible pouches for packaged drinking water and it has been decided that "the Indian Standard on packaged drinking water may be amended to incorporate quality parameters for flexible pouches with additional safeguards such as labeling on the pouches giving guidelines on safe handling and storage of pouches" be forwarded to the concerned Technical Committee for consideration and decision within three months and it is further decided that for the existing licensees who are packing water in pouches, hygienic conditions may be monitored within the factory of the licensee as well as with repsect to methods / systems employed for distribution and sale of pouches by the licensees and further that fresh licences for packaged drinking water in pouches may not be granted and the existing licences may not be renewed and it has been further decided that BIS may send the detailed report to the Government in this regard." Therefore, it is submitted that in view of the aforesaid policy decision, while renewing licence for packaged drinking water, a condition is provided that use of Bureau of Indian Standards Marking in respect of Flexible Pouches is prohibited. It is also further submitted in the affidavit-in-reply that it does not prohibit the use of the mark for existing licence, which is packing water in pouches subject to the terms and conditions of the Licence and the Rules and Regulations made therefor. It is also further submitted in the affidavit-in-reply that the aforesaid restriction does not affect the existing valid licence and use of BIS Mark is prevented upon the expiry of the existing valid licence at the time of renewal thereof, if other terms and conditions for renewal of licence are complied with. It is also further submitted that if licence is not renewed, then in that case, the licensee can prefer an appeal under Section-16 of the Act to the Central Government. It is further submitted in the affidavit-in-reply that the restrain of use of BIS marking on pouches / sachets is a reasonable restriction in the interest of larger public and restrain is made applicable at the time of renewal of licence and it does not restrain the manufacturers having valid licence.

#. Shri J.S.Yadav, the learned advocate appears on behalf of the respondent No.2 - BIS in all these matters except Special Civil Application No.14389 / 2004 and 14870 / 2004. Affidavit-in-reply is filed in Special

Civil Application No.2403 of 2005 on behalf of respondent - BIS. Additional affidavit-in-reply is also filed on behalf of the respondent No.2 - BIS. It is submitted that the Bureau of Indian Standard has been established under Section 3 of the Bureau of Indian Standard Act, 1986 and accordingly, under Section 4 of the Act, an Executive Committee is formed to perform exercise and discharge such of the functions, powers and duties as may be delegated to it by the Bureau. Under Rule-6 of the Rules, The Executive Committee is empowered to perform, exercise and discharge such of the functions, powers and duties as may be delegated to it by the Bureau. Section-10 of the Act gives powers and functions of the Bureau which are very exhaustive dealing with each and every situation which, inter alia, regulates the grant of licences and renew, suspend and cancel for use of standard mark. It is also further submitted that meeting of the Executive Committee held on 7th / 8th October, 2004 had discussed at length the problem of supply of packaged drinking water in flexible pouches and after taking into account various details, report, material, experience and also the material based on technical and scientific examinations, the Executive Committee has formed a policy decision to the effect that it would not be in the interest of public at large and public health to continue sale of such packaged drinking water into flexible pouches and therefoer, licences permitting sale of packaged drinking water in flexible pouches should not be renewed. It is also further submitted that what is not permitted by the Bureau of Indian Standards is the only mode of packing of sale of packaged drinking water in flexible pouches and the same is reasonable, fair and just decision in the interest of public at large. It is further submitted that the citizens have been permitted to carry on their business of selling water in packaged drinking water condition but, they shall have to sell packaged drinking water in the conditions which meets requirements under Specification Orders No : IS 14543 : 2004, IS : 15414 : 2003 which is reasonable. It is further submitted that the impugned decision taken by the BIS through its Executive Committee is a decision taken by the competent high power committee and therefore, it is requested to dismiss the present special civil applications and vacate the ad-interim relief granted earlier at the time of hearing of the present group of Special Civil Applications.

#. Shri Nikitkumar Kansara, Director, BIS, Ahmedabad Branch Office has made the followings statement at bar on 15th April, 2005.

"The Technical Committee has, in its meeting, on 8th April, 2005 has decided to issue the Draft Standard for "Pouches for Packaged Drinking Water" for wide circulation for one month period. Thereafter, it would be finalised by June, 2005 for implementation."

Therefore, it is requested that as the decision is in the interest of general public and in the interest of health of public at large, it is requested to dismiss the present special civil applications and vacate the ad-interim relief granted earlier.

#. Heard the learned advocates appearing on behalf of the respective parties.

#. The Bureau of Indian Standards Act, 1986 (No.63 of 1986) is an Act to provide for the establishment of a Bureau for the harmonious development of the activities of standardisation, marking and quality certification of goods and for matters connected there with or incidental thereto. As per Section-2(t) "Standard Mark" means the Bureau of Indian Standards Certification Mark specified by the Bureau to represent a particular Indian Standard and also included any Indian Standards Institution Certification Mark specified by the Indian Standards Institution. Under Section-3 of the Act, the Bureau of Indian Standard is established for the purpose of Act. Section-10 of the Act deals with powers and functions of the Bureau which reads as under :-

"10. Powers and functions of the Bureau :

(1) The Bureau may exercise such powers and perform such duties as may be assigned to it by or under this Act and,in particular, such powers include the power to-

(a) establish, publish and promote in such manner as may be prescribed the Indian Standard, in relation to any article or process;

(b) recognize as an Indian Standard, in such manner as may be prescribed, any standard established by any other Institution in India or elsewhere, in relation to any article or process;

(c) specify a Standard Mark to be called the Bureau of Indian Standards Certification Mark which shall be of such design and contain such particulars as may be prescribed to represent a

particular Indian Standard;

(d) grant, renew, suspend or cancel a licence for the use of the Standard Mark;

(e) levy fees for the grant or renewal of any licence;

(f) make such inspection and take such samples of any material or substance as may be necessary to see whether an article or process in relation to which the Standard Mark has been used conforms to the Indian Standard or whether the Standard Mark has been improperly used in relation to any article or process with or without a licence;

(g) seek recognition of the Bureau and of the Indian Standards outside Indian on such terms and conditions as may be mutually agreed upon by the urea with any corresponding institution or organisation in any country;

(h) establish, maintain and recognize laboratories for the purposes of standardisation and quality control and for such other purposes as may be prescribed;

(i) undertake research for the formulation of Indian Standards in the interests of consumers and manufactures;

(j) recognize any institution in India or outside which is engaged in the standardisation of any article or process or the improvement of the quality of any article or process;

(k) provide services to manufacturers and consumers of articles or processes on such terms and conditions as may be mutually agreed upon;

(l) appoint agents in India or outside India for the inspection, testing and such other purposes as may be prescribed;

(m) establish branches, offices or agencies in India or outside;

(n) inspect any article or process, at such times and at such places as may be prescribed in relation to which the Standard Mark is used or

which is required to conform to the Indian Standard by this Act or under any other law irrespective of whether such article or process is in India or is brought or intended to be brought into India from a place outside India;

(o) coordinate activities of any manufacturer or association of manufacturers or consumers engaged in standardisation and in the improvement of the quality of any article or process or in the implementation of any quality control activities;

(p) perform such other functions as may be prescribed.

(2) The Bureau shall perform its functions under this Section in accordance with, and subject to, such rules as may be made by the Central Government."

#. As per Section-11 of the Act, no person shall use, in relation to any article or process, or in the title of any patent, or in any trade-mark or design the Standard Mark or any colourable imitation thereof, except under a licence. Section-15 of the Act deals with licence and the Bureau may, by order, grant, renew, suspend or cancel a licence in such manner as may be determined by regulations and the grant or renewal of the licence under sub-section (1) shall be subject to such conditions and on payment of such fees as may be determined by regulations. Section-16 deals with appeal and any person aggrieved by an order made under Section 15 may prefer an appeal to the Central Government within such period as may be prescribed. Rule-6 of the Bureau of Indian Standards Rules, 1987 deals with the powers of the Executive Committee and the Executive Committee shall perform, exercise and discharge such of the functions, powers and duties as may be delegated to it by the Bureau. Rule-7 of the aforesaid Rules, 1987 deals with establishment, publication and promotion of Indian standards and since the Rule-7 is relevant, the same is referred to and reproduced as under :

:Chapter-III-Powers and functions of the Bureau:

"7. Establishment, publication and Promotion of Indian Standards -

(1) Establishment -

(a) The Bureau shall establish Indian Standards in relation to any article or process and shall amend, revise or cancel the standards so established as may be necessary, by a process of consultation with consumers, manufacturers, technologists, scientists and officials through duly constituted committee as provided hereafter. The procedure employed in establishing the standard shall also be designed such that concerned interest, in addition to the members of the Committee of the Bureau, have the opportunity to communicate their views.

(b) All standards, their revisions, amendments and cancellations, shall be established by notification in the Official Gazette.

(2) Technical Committees -

(a) For the purpose of formulation of Indian Standards in respect of articles or processes, technical committees of experts may be constituted. Such committees may include Division Councils, Sectional Committees, Subcommittees and Panels.

(b) Division Councils, Sectional Committees and Subcommittees shall be reconstituted once every three years. The tenure of Panels shall be as decided by the concerned Sectional Committee.

(3) Division Councils-

(a) Division Councils shall be set up by the Bureau in defined areas of industries and technologies for formulation of standards. These shall include concerned officers of the Bureau and representatives of various interest such as consumers, regulatory and other Government bodies, industry, scientists, technologists and testing organisations. These may also include consultants. An officer of the Bureau shall be the Member-Secretary.

(b) Major functions of a Division Council so would be as follows :

(i) To advise on the subject areas to be taken up for formulation of standards in their respective areas keeping in view the national needs and priorities;

(ii) To set up Sectional Committees within their areas, define their scopes, appoint their Chairman and members and coordinate their activities;

(iii) To approve proposals for work, decide which proposals should be taken up and direct the Sectional Committee (s) concerned to undertake the approved work and to determine the priority to be assigned to the work;

(iv) To advise on matters relating to research and development needed for the establishment of standards or their revisions;

(v) To study the work of international organisations and their committees in standard formulation as related to the area of work of the Division Council and recommend on the extent and manner of participation in standardization activities at the international level;

(vi) To advise on implementation of established standards;

(vii) To receive and deal with activity reports and to make recommendations thereon to the Bureau concerning matters in which the decision of the Bureau is necessary;

(viii) To carry out such tasks as may be

specifically referred to it by the Bureau / Standards Advisory Committee.

(4) Sectional Committees, Subcommittees and Panels -

(a) Sectional Committees shall be appointed by Division Councils or if necessary by the Bureau for the preparation of a particular standard or group of standards. These shall include concerned officers of the Bureau and representatives of various interests such as consumers, regulatory and other Government bodies, industry, scientists, technologists and testing organizations and may also include consultants, but consumer interest shall, as far as possible predominate. An officer of the Bureau shall be the Member-Secretary.

(b) A Sectional Committee may appoint subcommittees and / or panels.

(c) Sectional Committees, subcommittees and panels may co-opt experts to assist them in their work.

(5) Terms and conditions for engaging Consultants - The terms and conditions for engaging consultants in the work of the Division Councils and other technical committees and in the work relating to establishment of standards shall be a decided by the Executive Committee.

(6) Procedure for Establishment of Indian Standards-

(a) Any Ministry of the Central Government, State Governments, Union Territory Administrations, consumer organisation, industrial units, industry associations, professional bodies, members of the Bureau and members of its technical committees may submit proposal to the Bureau for establishing a standard or for revising, amending, or cancelling an established standard by making such request in writing.

(b) The work of formulation of standards on any specific subject shall be undertaken when the Division Council concerned is satisfied as a result of its own deliberations or on investigation and consultation with concerned interest that the necessity for standardization has been established.

(c) When the subject has been so investigated as in sub-rule (b) and the need established, the Division Council concerned shall assign the task of formulating the standard to an appropriate Technical Committee or shall appoint a new Technical Committee for the purpose.

(d) When request for establishing a standard for any specific subject has not been accepted after its due consideration, the proposer shall be informed of the decision.

(e) A draft standard prepared an duly approved by a Committee shall be issued in draft form and widely circulated for a period of not less than one month amongst the various interests concerned for critical review and suggestions for improvement. The wide circulation may be waived if so decided by the Sectional Committee where the matter is urgent or non controversial.

(f) The appropriate Technical Committee shall thereafter finalise the draft standard giving due consideration to the comments that may be received. The draft standard after it has been approved by the Sectional Committee or its Chairman shall be submitted to the Chairman of the Division Council concerned for adoption on its behalf.

(g) All established standards shall be reviewed periodically, at least once in fie years, to determine the need for revision or withdrawal. Standards which in the opinion of the Sectional Committee

need no revision or amendment shall be reaffirmed by the Sectional Committee.

(h) Proposals for revising or amending published standards shall be considered by the Technical Committee concerned. The revision or amendment shall then be dealt with in accordance with clauses (e) and (f) of sub-rule (6) dealing with the establishment of Indian Standards.

(i) The Director-General, however, shall have the power to issue amendments of the corrigenda type meant to correct errors and omissions in established Indian Standards, without reference to the concerned Technical Committee or the Division Council and report to the concerned Technical Committee.

(j) The Director-General shall also have the power to tentatively modify such of the provisions of an Indian Standard as in his view are necessary for expenditious fulfillment of any of the objectives of the Act.

Provided that within six months of such actions, concurrence of the concerned Sectional Committee is duly obtained.

(k) Withdrawal of an established Indian Standard shall be decided upon by the Chairman of the respective Division Council in the recommendation of the Sectional Committee concerned.

(7) Status of Indian Standards -

(a) The procedure employed in establishing Indian Standards is designed to ensure that all interested parties have an opportunity to put forward their views, that a consensus has been obtained on the contents of the standards and that there is substantial support for the standards.

(b) Indian Standards are voluntary and available to the public. Their implementation depends on adoption by concerned parties. However, an Indian

Standard becomes binding if it is stipulated in a contract or referred to in a legislation or made mandatory by specific orders of the Government.

(8) Publication - The Indian Standards established by the Bureau, their revisions and amendments shall be published and copies thereof, in any form as may be determined by the Bureau, shall be made available for sale.

(9) Pricing of Indian Standards and other Publications - The prices of Indian Standards and other publications shall be fixed by the Director - General according to the policy directives of the Executive Committee and may be reviewed periodically.

(10) Standards Promotion - The Bureau may promote standardization and adoption of Indian Standards by consumers, commerce,industry, Government and other interests, in such manner as may be considered necessary.

(11) Procedure for Establishment of Tentative (Provisional) Indian Standards -

(a) A tentative Indian Standard may be prepared when urgently needed but its technical accuracy cannot be established on account of technology being new or not having been proven commercially.

(b) The proposal for preparation of a Tentative Indian Standard shall be as per clause (a) of sub-rule (6) of Rule 7. The proposal shall be accompanied by a draft of the Tentative Indian Standard.

(c) The draft of the Tentative Indian Standard shall be examined by the Sectional Committee concerned for approval and issued as a Tentative Indian Standard without wide circulation, after its adoption by Chairman of Division

Council concerned on its behalf.

(d) The foreword of the Tentative Indian Standard shall clearly bring out the following :-

(i) Need for preparing the Tentative Indian Standard;

(ii) Scope of its application; and

(iii) Period of its validity - the Sectional Committee, may decide the period of validity but this shall not exceed two years. Period of validity may be extended by not more than two years on a review by the Sectional Committee.

(e) The Tentative Indian Standard shall not be used for Standard Mark.

(f) Before the expiry of the validity period, the Tentative Indian Standard shall be considered by the Sectional Committee for establishing it as a regular standard. If the Sectional Committee is not in favour of its establishment as a regular standard, the Tentative Indian Standard shall lapse after its validity period.

(g) Tentative Indian Standard shall be gazetted in accordance with clause (b) of sub-rule (1) of rule 7."

Rule-9 of the said Rules deals with "Standard Mark" which provides that the standard mark in relation to each Indian Standard shall be published by the Bureau in the Official Gazette provided that the Bureau may amend or rescind any Standard Mark so published. Sub-rule (2) of Rule-9 provides that Standard Mark already established and notified by the Indian Standards Institution shall be deemed to be valid unless amended or rescinded by the Bureau. Rule-15 of the Rules, 1987

deals with licence.

##. Now in backdrop of above legal provisions, the question which requires to be determined is that whether the respondent No.2 - Bureau of Indian Standards (BIS) is justified in restraining the petitioners from using BIS marking in respect of the flexible pouches / sachets unless and until there is new standard declared / prescribed by the BIS for pouches for packaged drinking water or not ? As per sub-rule (28) of Rule 49 of the Prevention of Food Adulteration Rules, 1955, "no person shall manufacture, sell or exhibit for sale packaged drinking water except under the the Bureau of Indian Standards Certification Mark". Respondent No.2 BIS has already declared specifications and Indian Standards for packaged drinking water (other than packaged natural mineral water) specification being IS : 14543 : 2004. Thus, for the purpose of packaged drinking water, the standard mark declared is IS : 14543 : 2004. All the petitions are having licence and / or were having licence, as required under the provisions of the aforesaid Act, for use of BIS. They are permitted to use IS : 14543 : 2004 for all typed packaged drinking water inclusive of flexible pouches / sachets. It is the case of the petitioners that all the petitioners are meeting with the norms and specifications as per IS : 14543 : 2004. On the other hand, it is case of the respondents that the Executive Committee has taken a policy decision in its meeting held on 7th / 8th October, 2004 not to renew the licence for packaged drinking water in pouches until the specifications in parameters providing additional safeguards are laid down and the manufacturers like members of the petitioner association are asked to meet with such parameters. It is also case of the respondents that such a decision has been taken in the interest of public at large and in the interest of health of public at large and it has been decided to have specifications and / or norms and prescribing new standards for pouches for packaged drinking water. Now, so far as prescribing the standard by BIS is concerned, under the provisions of the Act, certain procedure is required to be followed which are reproduced hereinabove. Unless and until such a standard is prescribed by the BIS for pouches for packaged drinking water under the guise that new standard for "pouches for packaged drinking water" is under contemplation, the respondent No.2 cannot restrain the petitioners from using BIS marking in respect of flexible pouches / sachets so long as they comply with and meet with the specifications and the norms as per standard IS : 14543 : 2003 and IS : 15410 : 2003. As per sub-rule (28) of Rule 49 of the

Prevention of Food Adulteration Rules, 1955, no person shall manufacture, sell or exhibit for sale packaged drinking water except under the Bureau of Indian Standards Certification Mark and as on today, so far as the packaged drinking water is concerned, there prevails standard of IS : 14543 : 2004 under the Bureau of Indian Standard of Certification Mark. Under the circumstances, under the guise of aforesaid policy decision and the executive instructions unless and until there is any new standard declared or published by the BIS for "pouches for packaged drinking water" and / or the existing Bureau of Indian Standard Certification Mark for sale or packaged drinking water is amended, it is not open for the respondents to restrain the petitioners who are ready and willing to comply with the norms and standards as per IS : 14543 : 2004. It is case of the petitioners that they are complying with the norms and standards and the specifications as per IS : 14543 : 2004. If ultimately it is found on inquiry and /or investigation that any of the petitioners are not complying with and / or meeting with the standard IS : 14543 : 2004, it is open to the respondents to cancel and / or suspend the licences in accordance with law. In absence of any new standard prescribed and / or declared by BIS under the provisions of the Act for "pouches for packaged drinking water", it is not open to the respondents not to renew the licence under the guise that new standard for "pouches of packaged drinking water" is under contemplation. It is also required to be noted that even most of the petitioners' licences are in operation and under validity period and the same are valid upto April, 2005, June, 2005 and September, 2005 and even upto January, 2006. Even as per averments made in the affidavit in reply filed on behalf of the respondent No.2 in Special Civil Application No.14389 of 2004, it does not prohibit use of mark for existing licensee which is packing water in pouches subject to the terms and conditions of the licence and the rules and regulations and that, aforesaid restriction does not affect valid licence and use of BIS mark (IS : 14543 : 2004) and use of the said mark is prevented upon expiry of such existing valid licence.

##. Thus, according to the respondent No.2 even the respective petitioners are permitted to use BIS Marking during validity of their licence. As stated hereinabove, Shri Nitikkumar Kansara, Director, BIS Ahmedabad Branch Office has made statement that the Technical Committee has, in its meeting, on 8th April, 2005 has decided to issue the Draft Standard for "Pouches for Packaged Drinking Water" for wide circulation for one month

period. Thereafter, it would be finalised by June, 2005 for implementation. Thus, all the petitioners are permitted to use BIS for pouches for packaged drinking water till new standard for pouches for packaged drinking water is prescribed and declared by BIS irrespective of validity of their licence, meaning thereby, if after June, 2005 the new standards for pouches for packaged drinking water is prescribed and declared and specified by BIS and licences are valid even thereafter, in that case also, the respective petitioners and the licensees are required to act as per the new standard which is likely to be implemented with effect from June, 2005.

##. Under the circumstances, the respondents are restrained from preventing the petitioners from using BIS Marking in respect of flexible pouches / sachets on condition that each of them shall comply with all requirements prescribed under the licence and meet with specifications as per IS : 14543 : 2004 and till new standard is for pouches for packaged drinking water is prescribed and / or specified by the Bureau of Indian Standards and new / amended Bureau of Indian Standards Certification Mark is specified by the Bureau of "Pouches for Packaged Drinking Water" and in cases where licences are already expired and their renewal is refused on the aforesaid policy decision of the Executive Committee, the respondent No.2 is directed to renew the licence for pouches for packaged drinking water initially for a period of four months i.e. upto 15th July, 2005 and / or till the new and / or amended Bureau of Indian Standard Certification Mark for "Pouches for Packaged Drinking Water" is specified by the Bureau whichever is earlier. This direction is issued in view of the fact that statement is made on behalf of respondent No.2 BIS that new standard for pouches for packaged drinking water will be finalised by June, 2005 for implementation. It is, however, made clear that if it is found that any of the petitioners is not meeting with specifications and the norms as per IS : 14543 : 2004 and / or the conditions of licence, it will be open to the respondents to cancel / suspend the licence in accordance with law.

##. For the reasons stated above, the petitions partly succeed. The action of the respondents in not allowing the petitions to use BIS marking with IS : 14543 : 2004 in repsect of flexible pouches / sachets and / or not to renew the licence for using BIS Marking in respect of flexible pouches / sachets i.e. IS : 14543 : 2004 is hereby quashed and set aside subject to aforesaid observations and conditions as well as directions above.

Rule is made absolute to the aforesaid extent in each of the petition of this group, however, with no order as to costs.

[M.R.Shah, J.]

#kailash#